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CITATIONS

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Cases—Continued

Statute:

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1072

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR EMPLOYEES OF AMERICA ET AL., PETITIONERS

v.

WILSON P. LOCKRIDGE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IDAHO

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

INTEREST OF THE NATIONAL LABOR RELATIONS BOARD

The question presented in this case, in which certiorari was granted on March 30, 1970, is whether the National Labor Relations Act preempts a State court suit for damages for loss of employment brought by a union member complaining that the union wrongfully caused the employer to discharge him for dues delinquency under the union-security clause of the collective bargaining agreement. Since the conduct complained of is "arguably" an unfair labor practice under Sections 8(b)(2) and (1)(A) and 8(a)(3)

of the National Labor Relations Act (*infra*, p. 12, n. 8), the Board believes that this question should be answered affirmatively. *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 245; *Plumbers' Union* v. *Borden*, 373 U.S. 690; *Iron Workers* v. *Perko*, 373 U.S. 701. The Idaho Supreme Court reached a contrary conclusion on the authority of *Machinists* v. *Gonzalez*, 356 U.S. 617, which, for the reasons given below, the Board believes is inapposite. The proper application of the preemption principle, which is designed to avoid interference with federal law by the application of inconsistent State law, is an important issue in the administration of the National Labor Relations Act and one in which the Board has a continuing interest.

STATEMENT

The collective bargaining agreement between Greyhound and the Union[1] required existing employees to become and remain members of the Union 30 days after the effective date of the agreement, as a condition of continued employment (A. 60, 88). Section 91 of the Union's Constitution and General Laws provided (A. 91–92):

> Sec. 91. All dues * * * of the members of this Association are due and payable on the first day of each month for that month * * *. They must be paid by the fifteenth of the month in order to continue the member in

[1] Petitioner Northwest Division 1055 is a geographic subdivision of petitioner Amalgamated Association, covering part of the State of Idaho (A. 57). Both are referred to here as "the Union."

> good standing. * * * A member in arrears for his dues * * * after the fifteenth day of the month is not in good standing * * * and where a member allows his arrearage * * * to run into the second month before paying the same, he shall be debarred from benefits for one month after payment. Where a member allows his arrearage * * * to run over the last day of the second month without payment, he does thereby suspend himself from membership in this Association. * * * Where agreements with employing companies provide that members must be in continuous good financial standing, the member in arrears one month may be suspended from membership and removed from employment, in compliance with terms of the agreement.[2]

Wilson Lockridge was a member of the Union from May 1943, until November 2, 1959, and had been continuously employed as a bus driver for Western Greyhound Lines or its predecessor during that time (A. 59). On November 2, 1959, Lockridge was suspended from membership in the Union on the ground that he was in arrears in the payment of his October dues,[3] contrary to the requirements of the Union constitution and general laws. On the same day, the

[2] The Union apparently took the position that the collective agreement required a member to be "in continuous good financial standing" (see A. 51).

[3] Prior to September 1959, Lockridge's dues had been deducted from his paycheck by Greyhound, pursuant to a checkoff arrangement. In 1959, Lockridge and a number of other employees were released at their request from the checkoff; the Union indicated, however, that Lockridge would have to send his dues directly to the Union office in Portland, Oregon. (A. 80–81.)

Union notified Greyhound that Lockridge was no longer a member in good standing and requested that he be discharged pursuant to the union-security clause in the collective agreement. Greyhound discharged Lockridge. (A. 59–60, 82).

Lockridge did not file unfair labor practice charges with the National Labor Relations Board.[4] Instead, in September 1960, after the six-month limitations period in Section 10(b) of the National Labor Relations Act (29 U.S.C. 160(b)) had expired,[5] he filed suit in the State district court against the Union and Greyhound, which was later dropped as a party. The amended complaint contained two counts, one in tort and the other in contract. Count One alleged that the Union had sus-

[4] Elmer Day was suspended from membership in the Union and discharged from Greyhound under the same circumstances. After his discharge on November 12, 1959, Day filed a charge with the Board's Regional Director. On December 15, 1959, the Director advised Day, by letter, that "it appears that, because there is insufficient evidence of violations, further proceedings are not warranted at this time. I am therefore refusing to issue Complaint in these matters." The letter further advised that "you may obtain a review of this action by filing a request for such review with the General Counsel of the National Labor Relations Board * * *." (A. 93, n. 2.) Day made no request for review. Instead, he filed suit against the Union in the Circuit Court of Multnomah County, Oregon, for tortious interference with employment, and received a jury award for general and punitive damages. On appeal, the Supreme Court of Oregon (two judges dissenting) reversed, holding the conduct complained of to be within the Board's exclusive jurisdiction. *Day* v. *Northwest Division 1055*, 238 Ore. 624, 389 P. 2d 42, certiorari denied, 379 U.S. 878.

[5] Section 10(b) provides in relevant part: "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board * * *."

pended Lockridge from membership for dues arrearage when he was not in fact subject to suspension under the Union's constitution and laws, and had thereafter caused Greyhound to discharge him on the ground that he was no longer a member in good standing (A. 45–46). It further alleged that, "in suspending plaintiff from membership in the [Union] which resulted in plaintiff's loss of employment, the [Union] * * * acted wantonly. wilfully and wrongfully and without just cause, and * * * in a manner never before indulged in, and * * * deprived plaintiff of his livelihood and all benefits of his employment with Greyhound Corporation that had accrued to him and would accrue to him by reason of his seniority and experience, and plaintiff has been harassed and subject to mental anguish, all to plaintiff's damage in the sum of $212,200" (A. 46–47).

Count Two alleged that, "in wrongfully suspending plaintiff from membership in the [Union], which resulted in plaintiff's discharge from employment with the Greyhound Corporation, [the Union] * * * violated the constitution and general laws of the [Union] which constituted a contract between the plaintiff * * * and the [Union], and as a result of said breach of contract plaintiff has been deprived of his livelihood and all benefits from his employment with said Greyhound Corporation * * * and plaintiff has been embarrassed and subjected to mental anguish, all to plaintiff's damage in the sum of $212,200.00." The complaint sought damages of $212,200 and "such other and further relief as to the court may appear meet

and equitable in the premises." (A. 48.) The complaint did not specifically request that Lockridge be reinstated to membership in the Union.

In April 1961, the Idaho district court dismissed the complaint. It found, as the Union had urged, that the gravamen of the complaint was that the Union had caused "plaintiff's employer to discriminate against him on grounds other than failure to tender uniformly required dues," and that "this constitutes an unfair labor practice" within the exclusive jurisdiction of the National Labor Relations Board (A. 26). The Idaho Supreme Court reversed, however, holding that the State court had jurisdiction under *Machinists* v. *Gonzales*, 356 U.S. 617 (discussed *infra*, pp. 13–16). The court relied, *inter alia*, on *Perko* v. *Local 207, Iron Workers*, 171 Ohio St. 68, 167 N.E. 2d 903, and *United Association of Journeymen, etc.* v. *Borden*, 160 Tex. 203, 328 S.W. 2d 739, which were subsequently reversed by this Court (*infra*, pp. 14–16). (A. 27–35.)

After trial, the Idaho district court held in Lockridge's favor. The court found that the union's "officers were irritated by plaintiff's [Lockridge's] refusal to go along with a voluntary dues check-off by Greyhound and mistakenly believing that they were technically correct, asked plaintiff's termination under the collective bargaining agreement because he was not in good standing. In doing so, they decided to make an example of plaintiff" (A. 50–51). The Union's actions were wrongful, the court further found, because the collective agreement "only requires that plaintiff re-

main a *member* of defendant union as a condition of employment, as contrasted to a requirement that the employee be a *member in good standing"*; moreover, the Union had departed from its "custom and tradition" of tolerating such "short term delinquency" (A. 51).[6] The court also found that, although "the pleadings have been amended rather substantially, the preemption issue is the same as it was when this matter first went to the Idaho Supreme Court"—Lockridge "continues to claim that he is entitled to damages for injury to his employment as distinguished from remedies for loss of union rights * * *." But, the court concluded, though the Union's position that such a cause of action is preempted by the NLRA "is greatly reinforced by *Plumbers' Union* v. *Borden,* 373 U.S. 690, * * * [and] *Iron Workers* v. *Perko,* 373 U.S. 701, * * * I feel that I have been virtually directed by the Idaho Supreme Court to decide this case on the theories of 'Gonzales', and I must consider that decision the law of this case." (A. 52.)

Accordingly, the district court held that, "although plaintiff has never sought such remedy, he is entitled to restoration of his membership in [the Union] upon

[6] The district court concluded that the acts of the Union "in suspending plaintiff from union membership and thereafter refusing to reinstate him were predicated solely upon the ground that plaintiff had failed to tender periodic dues in conformance with the requirements of the union Constitution and employment contract as they interpreted the same," but that such interpretation was erroneous and thus "wrongful and resulted in a wrongful interference with plaintiff's employment, occupation and livelihood and subjected plaintiff to embarrassment, discomfort, humiliation and mental anguish" (A. 66).

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payment of current dues, and in addition he is entitled to actual damages suffered as a result of loss of membership from the time of its wrongful termination to its restoration" (A. 52). Comparing the earnings of another Greyhound driver who took Lockridge's place on the seniority list with those shown by Lockridge's income tax returns from November 3, 1959, to September 15, 1965, the court found that Lockridge's "actual damages resulting from loss of his driving job with Greyhound have been $32,678.56" (A. 52–53).

The court held, however, that Lockridge was not entitled to recover for future damages arising from continued loss of employment, since it was contemplated that "restoration of union membership will * * * allow his reemployment at the same job" (A. 53). It also declined to award Lockridge any damages for his loss of seniority with Greyhound, or for the monetary value of any retirement and insurance benefits lost, or any punitive damages. The court concluded that it had no way of computing the first; that the value of the second had not been established; and that, as to the third, the Union had acted on the belief that its position was legally sound and Lockridge was partially at fault for not pursuing his remedies before the Board. ("I do not believe that it can be assumed that the N.L.R.B. would have acted unfavorably to plaintiff had he made application to it and had all the facts been fully presented to it.") (A. 53–54.)

On appeal, the Idaho Supreme Court (one judge dissenting) upheld the district court, but modified the judgment to provide that Lockridge's seniority rights be restored (A. 109, 111).[7] The Supreme Court found that the Union had engaged in conduct which "did most certainly" violate Section 8(b)(1)(A) and (2) of the National Labor Relations Act, and "probably caused the employer to violate 8(a)(3)" (A. 98). It held, however, that, in addition to these unfair labor practices, the Union broke the contract between it and Lockridge, which "provided that Lockridge would have continued membership in his union so long as he paid his dues no later than the end of the second month after they became due" (A. 98–99). Concluding that the "complaint upon which this cause was finally submitted was that Lockridge was wrongfully deprived of *membership,*" and that the "only relationship his employment has to this case is a means by which damages can be computed" (A. 99), the Idaho Supreme Court held that this case was governed by *Gonzalez, supra,* rather than the intervening decisions in *Borden* and *Perko, supra.* While noting that Lockridge's "prayer for equitable relief was framed in general terms," the court stated "that in this case or any other within the narrow area where we can assert jurisdiction to relieve wrongfully denied membership, the primary relief which can and shall be granted is restoration of union

[7] The Supreme Court upheld the denial of damages based on mental suffering, holding such damages to be unavailable in contract actions (A. 110).

membership"; "[d]amages, if any, are a secondary consideration, and shall be limited to compensation for damage suffered until such time as membership is restored" (A. 99–100).

SUMMARY OF ARGUMENT

Where conduct arguably is protected or prohibited by the National Labor Relations Act, State and federal court jurisdiction over that conduct is preempted by the primary jurisdiction of the National Labor Relations Board. *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236. Here the conduct complained of—the action of the union in causing the discharge of a member on account of dues delinquency under the union-security clause of its collective agreement when he allegedly was not in fact delinquent—is arguably an unfair labor practice. Section 8(b)(2) and (1)(A) of the Act prohibit a union from causing an employer to discriminate against an employee on grounds other than his failure to tender periodic dues and initiation fees uniformly required as a condition of acquiring or maintaining membership; and Section 8(a)(3) prohibits an employer from acceding to a union demand which rests on other grounds. *Radio Officers Union* v. *National Labor Relations Board*, 347 U.S. 17, 40–42.

The Supreme Court of Idaho erred in relying on *Machinists* v. *Gonzales*, 356 U.S. 617, in which the exercise of State court jurisdiction was sustained. The subsequent decisions in *Plumbers Union* v. *Borden*, 373 U.S. 690, and *Iron Workers* v. *Perko*, 373 U.S.

701, make clear that *Gonzales* turned on the fact that the lawsuit there focused on relations between the member and the union that did not directly involve matters of employment. Where, as in *Perko* and *Borden* and here, the suit focuses "principally, if not entirely, on the union's actions with respect to [the member's] efforts to obtain employment" (*Borden, supra,* 373 U.S. at 697), relief may be sought only from the Board and State courts are without jurisdiction to provide it.

ARGUMENT

BECAUSE THE GRAVAMEN OF THE COMPLAINT WAS THAT THE UNION HAD WRONGFULLY INTERFERED WITH LOCKRIDGE'S EMPLOYMENT RELATION, THE SUBJECT MATTER OF THE SUIT WAS WITHIN THE EXCLUSIVE JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD

In *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, 245, this Court held that, when "an activity is arguably subject to §7 or §8 of the [National Labor Relations] Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." Here the Union's conduct in causing Greyhound to discharge Lockridge under the union-security agreement for dues delinquency is arguably prohibited by Sections 8(b)(2) and (1)(A), and Greyhound's action in discharging him for that reason is arguably prohibited by Section 8(a)(3), of the

Act.[8] See *Radio Officers' Union* v. *National Labor Relations Board*, 347 U.S. 17, 40–42. Indeed, the Idaho Supreme Court found that "[the Union], in the opinion of this court, did most certainly violate 8(b)(1)(A), did most certainly violate 8(b)(2) [citation omitted] and probably caused the employer to vio-

[8] Section 8(b)(2) makes it an unfair labor practice for a union "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) * * * or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership." Section 8(b)(1)(A) makes it an unfair labor practice for a union "to restrain or coerce * * * employees in the exercise of the rights guaranteed in section 7," which includes the right not only "to form, join, or assist labor organizations," but "the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

Section 8(a)(3) makes it an unfair labor practice for an employer—

> by discrimination in regard to hire or tenure of employment * * * to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act * * * shall preclude an employer from making an agreement with a labor organization * * * to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, which is the later * * *: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization * * * if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership * * *.

late 8(a)(3), all of which constitute unfair labor practices, all of which are subject to the exclusive cognizance of the National Labor Relations Board and are *not* subject to adjustment by, or interference with, Idaho courts" (A. 98).[9] Nevertheless, the Idaho Supreme Court held that it had jurisdiction to afford Lockridge relief under *Machinists* v. *Gonzales*, 356 U.S. 617, which was decided prior to *Garmon*. We submit that the Idaho court erred in concluding that the present case was governed by *Gonzales*, rather than *Plumbers Union* v. *Borden*, 373 U.S. 690, and *Iron Workers* v. *Perko*, 373 U.S. 701.

1. In *Gonzales*, a union member, who was wrongfully expelled because he brought assault and battery charges against an international representative of the union (298 P. 2d 92, 94), brought suit in a State court for restoration of membership in the union and for damages due to his illegal expulsion. The State court, finding a breach of the contract between the member and the union as embodied in the union constitution and by-laws, ordered Gonzales reinstated to membership and awarded him damages for physical and mental suffering and for lost wages. 356 U.S. at 618. This Court found that "the subject matter of the litigation * * * was the breach of a con-

[9] The situation here is thus not one where the Union's conduct was "clearly not proscribed by any part of § 8 of the Act," and the "only possible dispute could be over whether the [conduct] was activity protected by § 7 of the Act or * * * was neither protected nor prohibited by the Act"—the situation where three members of this Court have recently called for a reconsideration of *Garmon*. *Longshoremen* v. *Ariadne Co.*, 397 U.S. 195, 201 (concurring opinion).

tract governing the relations between [Gonzales] and his unions"; the "suit did not purport to remedy or regulate union conduct on the ground that it was designed to bring about employer discrimination against an employee, the evil the Board is concerned to strike at as an unfair labor practice under Section 8(b)(2)." *Id.* at 621–622. It held that, in these circumstances, the State court, which had power to order Gonzales reinstated to union membership, was not deprived of jurisdiction to "fill out" its reinstatement remedy by also awarding him damages for loss of employment, even though it was possible that the Board, too, could have awarded the latter relief. *Id.* at 620–621.

The limited scope of *Gonzales* was made clear in *Plumbers' Union* v. *Borden,* 373 U.S. 690, and *Iron Workers* v. *Perko,* 373 U.S. 701. In *Borden,* a member who was refused a job referral by the union because he had sought work directly, instead of through the union hiring hall, brought a State court suit against the union claiming, *inter alia,* that it "had breached a promise, implicit in the membership arrangement, not to discriminate unfairly or to deny any member the right to work" (373 U.S. at 692); the State court awarded the member damages for loss of earnings resulting from the refusal to refer and also punitive damages (*id.* at 693). This Court, finding that the union conduct complained of was arguably either an unfair labor practice under Section 8(b)(1)(A) or (2) of the Act, or activity protected under Section 7, held that the State court suit was barred under *Garmon.*

Distinguishing *Gonzales*, the Court stated (373 U.S. at 697):

> The *Gonzales* decision, it is evident, turned on the Court's conclusion that the lawsuit was focused on purely internal union matters, *i.e.*, on relations between the individual plaintiff and the union not having to do directly with matters of employment, and that the principal relief sought was restoration of union membership rights. In this posture, collateral relief in the form of consequential damages for loss of employment was not to be denied.

On the other hand, the Court continued (*id.* at 697–698):

> The suit involved here was focused principally, if not entirely, on the union's actions with respect to Borden's efforts to obtain employment. No specific equitable relief was sought directed to Borden's status in the union, and thus there was no state remedy to "fill out" by permitting the award of consequential damages. The "crux" of the action * * * concerned Borden's employment relations and involved conduct arguably subject to the Board's jurisdiction.
>
> Nor do we regard it as significant that Borden's complaint against the union sounded in contract as well as in tort. It is not the label affixed to the cause of action under state law that controls the determination of the relationship between state and federal jurisdiction. * * * In the present case, the ***conduct*** on which the suit is centered, whether described in terms of tort or contract, is conduct whose lawfulness could initially be judged only by the federal agency vested with exclusive primary jurisdiction to apply federal standards.

Similarly, in *Perko* this Court, in reversing a State court's award of damages for past and future loss of earnings, held that the *Garmon* preemption principle barred a State court suit by a union member claiming that the union had wrongfully deprived him of his right to continue working as a foreman and had thereby caused his discharge. 373 U.S. at 702–704. Finding *Gonzales* inapposite, this Court stated: "As in *Borden,* the crux of the action here concerned alleged interference with the plaintiff's existing or prospective employment relations and was not directed to internal union matters. * * *" *Id.* at 705.

2. Here, as in *Borden* and *Perko,* the suit "focused principally, if not entirely, on the union's actions with respect to" the member's "employment relations." *Borden, supra,* 373 U.S. at 697. Although, as in *Gonzales,* the member alleged that he had wrongfully been deprived of union membership, here, unlike there, the reason for the deprivation had "to do directly with matters of employment," and damages for loss of employment, rather than union membership rights, was the "principal relief sought." *Ibid.* The Union's reason for suspending Lockridge from membership for alleged delinquency in his dues payments was, as its quick action in notifying Greyhound showed, to procure his discharge under the union-security clause of the collective agreement. Moreover, the "crux" of Lockridge's complaint—in both counts—was that the improper suspension had been used by the Union as a means of wrongfully procuring his discharge from Greyhound (*supra,* pp. 4–6). Lockridge never specifi-

cally sought reinstatement in the Union; the State court granted that relief, *sua sponte,* in an apparent effort to fit the case within *Gonzales* (*supra,* pp. 7–8).

The Idaho Supreme Court viewed *Borden* and *Perko* as distinguishable because the members there *"had never been denied their membership,"* and because *Borden* involved " 'difficult and complex problems inherent in the operation of union hiring halls' while *Perko* presented 'difficult problems of definition of status and coercion * * * of a kind most wisely entrusted initially to the [Board] * * *' " (A. 105–106). But these distinctions are insubstantial. As this Court's opinions show (*supra,* p. 15), the decisions in *Borden* and *Perko* turned, not on the question of union membership, but on the fact that the gravamen of the complaint was that, because of the member's loss of favor with the union, it had taken action which adversely affected his employment. Moreover, as the dissenting judge below pointed out (A. 125), the determination whether a union has been "acting in pursuance of a lawful union security agreement" is "not 'merely peripheral' to the Act nor is it one which involves wholly internal union matters"; it entails "precisely the sort of 'difficult and complex problems' which * * * are solely within the [primary] competence of the expert National Labor Relations Board."

Indeed, whether a union has violated Section 8(b)(2) or (1)(A) of the Act by demanding a member's discharge under a union-security clause is a question the Board deals with repeatedly in numerous contexts, and it often involves difficult and subtle considera-

tions. Not only does the Board interpret the terms of union constitutions and by-laws and of union-security agreements to determine whether members are in fact delinquent (see Pet. 19, n. 11). The Board may also have to determine such other issues as whether the arrearage represents dues for which the union is entitled to seek discharge, or assessments for which it is not (*National Labor Relations Board* v. *Food Fair Stores, Inc.*, 307 F. 2d 3 (C.A. 3); *Teamsters Local 959 (RCA Service Co.)*, 167 NLRB No. 148, 66 LRRM 1203); whether the dues sought to be exacted are for a period covered by the union-security clause (*Operating Engineers, Local No. 139 (Camosy Construction Co.)*, 172 NLRB No. 12, 68 LRRM 1301); whether, even if the member is dues-delinquent, the union has fulfilled its fiduciary obligation of informing him of his obligation to join the union in order to keep his job (*National Labor Relations Board* v. *Local 182, Teamsters,* 401 F. 2d 509, 510 (C.A. 2), certiorari denied, 394 U.S. 213; *Electrical Workers, Frigidaire Local 801* v. *National Labor Relations Board,* 307 F. 2d 679, 683–684 (C.A. D.C.), certiorari denied, 371 U.S. 936); whether the union's demand for dues was unlawfully conditioned on payment of some other obligation (*Assoc. of Western Pulp & Paper Workers (Fibreboard Paper Products Corp.)*, 170 NLRB No. 8, 67 LRRM 1605 (fines)); or whether the demand for discharge was in fact based on a reason other than the dues delinquency (*Rochester Roofing & Sheet Metal Co., Inc.*

165 NLRB 501, 504–505; *Zoe Chemical Co., Inc.*, 106 NLRB 1001, 1021, 1031, 1034, enforcement denied on other grounds, 406 F. 2d 574 (C.A. 2)).

In the present case, in order to determine whether the Union had violated Section 8(b)(2) or (1)(A) of the Act, the Board would have to interpret the same materials the State courts did: the Union's constitution, the union-security clause of the collective agreement, and the Union's past practice in administering membership obligations. The Board would have to determine at what point dues delinquency subjected a member to discharge; and, assuming that the Union was technically correct in securing Lockridge's discharge, whether it normally tolerated such delinquency and was really motivated by Lockridge's refusal to abide by the checkoff. The Board could well have found the facts differently than did the Idaho courts;[10] and, even if it did not, it probably would have ordered a different remedy—*e.g.*, reinstatement, with more or less back pay. Or the Board might have refused to reach the merits of the controversy, because Lock-

[10] Cf. the disposition of Day's charge (n. 4, *supra*). However, as the district court recognized (*supra*, p. 8), the circumstance that the Regional Director found insufficient evidence of an unfair labor practice in Day's case does not mean that the same conclusion would have been reached respecting Lockridge. But, even if the refusal to issue an unfair labor practice complaint on Day's charge foreshadowed the same result for Lockridge (see Opp. to Pet. for Cert. 15), this merely shows that the conduct complained of was not unlawful under the National Labor Relations Act.

ridge had not acted with the dispatch required by Section 10(b) of the Act (see n. 5, *supra*). Accordingly, here, as in *Garmon,* the State court has regulated conduct which is "so plainly within the central aim of federal regulation" that potential interference with the federal regulatory scheme can be avoided only by requiring the State court to defer "to the exclusive primary competence of the Board." 359 U.S. at 244, 245.

CONCLUSION

The judgment of the Supreme Court of Idaho should be reversed, and the case should be remanded with instructions to dismiss the complaint for want of jurisdiction.

Respectfully submitted.

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